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Q. Can you identify Larue Exhibit 4 for me, please?

A. This appears to be a copy of the report that I filed in January of 2007.

Q. And Larue Exhibit 4 is a copy of the document that you were reading from just a moment ago when you identified what you were asked to do?

A. Yes, sir.

Q. And if you turn to Exhibit 3 of Larue Exhibit 4, it identifies the materials you considered in preparation for this report, correct?

A. That's what Exhibit 3 does, yes, sir.

Q. Is it complete?

A. As far as I know, it's complete.

Q. And if you turn to page 2 of Exhibit 3 of Larue Exhibit 4, it identifies two complaints on that page.

Do you see that?

A. Yes, sir.

Q. Are those the only two complaints that you reviewed prior to the submission of

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your report on January 5, 2007 in this matter?

A. I think so. I don't remember -- I remember looking at two. I'm trying to remember if one -- I believe these are the two that I looked at.

Q. Have you reviewed any other complaints in this matter since the submission of your report on January 5, 2007?

A. No, sir.

Q. And so when you referred to plaintiff's assertions in your report, you are referring to the assertions in these two complaints, correct?

A. No, sir.

Q. What are you referring to?

A. I'm referring to the assertions that counsel had asked me to assume that plaintiff would make or had already made or were made in these complaints.

I didn't derive from these reports what complaints I would respond to or what I wouldn't.

Q. Were the assertions that were

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provided to you by a counsel provided to you orally or in writing or both?

A. Orally.

Q. And the facts that were -- you were asked to assume as reflected in your report, were they provided to you orally or in writing?

A. By counsel, orally.

Q. Did anyone else provide you assumptions other than counsel?

A. I don't know. I certainly had some discussions with Amir Rosen at Cornerstone. I don't remember the content of all of those discussion. He may have reviewed a draft and suggested that this assumption was inappropriate. I just don't recall.

Q. And did Cornerstone provide you anything in writing?

A. In writing, dealing with what?

Q. Dealing with this matter?

A. Well, they provided me, I mean, they would comment on my draft and so that was a provision in writing, basically corrections or typos and so forth or

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questions or comments on my drafts that I had sent out.

Did they provide me with other things? They provided me with a number of Bates stamped document.

Q. Is everything other than the draft that Cornerstone provided you related to this matter reflected on Exhibit 3?

MR. BUTLER: Objection to the form. He didn't say the drafts were provided by Cornerstone, but you can answer the question.

A. Let me be clear. I generated those drafts. I would get comments, written comments back sometimes on those drafts. Sometimes the comments would be oral.

Q. I didn't mean to suggest anything else.

I assume when you got it back, you referred to the comments on those drafts?

A. Yes, I just want to be clear. As far as the -- I reviewed this sheet, Exhibit 3.

As to the specific Bates numbers, I

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2 believe that was provided to me by
3 Cornerstone. They had accumulated and made a
4 comprehensive listing of the documents I had
5 been provided with. As far as I know, this
6 is complete.

7 Q. So other than the marked up drafts,
8 everything that Cornerstone provided to you
9 relating to this matter is reflected on
10 Exhibit 3?

11 A. I believe so.

12 Q. Now, you described what you were
13 asked to do and I believe that you read
14 paragraphs 4-A through 4-D of Larue Exhibit
15 3, is that correct?

16 A. Yes, sir.

17 Q. And did you do everything that you
18 were asked to do as reflected in paragraphs
19 4-A through 4-D?

20 A. I believe I did.

21 Q. Did you do anything else in this
22 matter?

23 A. Not that I recall.

24 Do you have a specific example?

25 Q. Just a question.

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2 A. I don't recall doing anything else.
3 What I did was write this report and review
4 the documents.

5 Q. And are all of the opinions about
6 which you are prepared to testify at trial in
7 this matter reflected in your opening report
8 and/or your rebuttal report?

9 A. As far as I know, they are.

10 Q. Are the bases for each of those
11 opinions set forth in your opening report
12 and/or rebuttal report?

13 A. I believe they are.

14 Q. If you look at page 4, at the top,
15 it talks about based on certain factual
16 assumptions, correct?

17 A. Yes, sir.

18 Q. Are all of the factual assumptions
19 on which you base your opinions in paragraph
20 4-C set forth in Larue Exhibit 3?

21 MR. BUTLER: I don't understand.

22 Q. I'm sorry, Larue Exhibit 4, your
23 report.

24 A. I named my appendices exhibits, so
25 I'm getting confused.

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2 Q. We will agree that your report is
3 Larue Exhibit 4 and I will try to use the
4 term report.

5 Fair enough?

6 A. Yes, sir.

7 Q. Let me rephrase the question.

8 At the top of page 4 of your
9 report, you refer to certain factual
10 assumptions, correct?

11 A. Yes, sir.

12 Q. It is those factual assumptions
13 that you base the opinions set forth in
14 paragraph 4-C of your report, Roman S-I
15 through V, correct?

16 A. To the best my knowledge and
17 belief, yes.

18 Q. Are all of the factual assumptions
19 you refer to in paragraph C set forth in your
20 report?

21 A. To the best of my knowledge and
22 belief, they are.

23 I would also indicate I filed a
24 rebuttal case in this report and I believe
25 there may have been some assumptions stated

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2 there in response to Mr. Love's report.

3 Q. Are the factual assumptions, if you
4 can turn to, page 23, there is a section 4,
5 Roman I, entitled Relevant Factual
6 Background, correct?

7 A. Yes, sir.

8 Q. That goes through about somewhere
9 on page 26, correct?

10 A. Roman numeral I goes through page
11 26. I'm sure that throughout some of the
12 other discussions, there are additional
13 factual assumption that are articulated.

14 Q. Is all of Roman I on pages 23
15 through 26 factual assumptions that you were
16 asked to make by counsel for Dexia?

17 A. Directly or indirectly, I would say
18 the answer to that question is yes.

19 I will say that I have reviewed,
20 for example, I think you referred to the
21 first complaint or the third complaint or
22 fourth complaint and I had -- my recollection
23 is that I had prepared a draft based on what
24 I took to be factual representations in that
25 complaint and I believe I drafted up, you

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know, my understanding of the facts and circumstances and in subsequent -- counsel reviewed that draft and may have made corrections or additions.

I know in a couple of cases, probably made some additions to the facts that I had assumed to be true in this case, so I prepared the first draft based on, I believe, these complaints and those facts were revised in order to more accurately depict what was going on.

Q. More accurately depict not what was going on, but what counsel wanted you to assume?

MR. BUTLER: That's not what his testimony was.

A. It's my understanding that the factual assumptions that I was asked to make were factual assumptions and the opinion of counsel were true and correct.

I don't believe I was asked to assume anything and I didn't find anything that would cause me to believe that I was asked to assume something that was incorrect.

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Q. So -- but let me make sure this is -- that I'm sure I understand.

There are statements of facts set forth in your report, correct, about this matter?

A. As I've indicated on page 23, I had been asked to make factual assumptions. I'm not stating factually that -- the assumptions certainly under Roman numeral I are assumptions that I believed to be true, but I haven't made any independent investigation to confirm the accuracy of those assumptions or facts.

Q. That's really what I want to make sure I understand is that the statements which appear to be statements of fact are really statements of your assumption, correct?

MR. BUTLER: I object to the form of the question. He stated, quite clearly stated that these are factual assumptions.

A. I did state there that these are factual assumptions.

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I presume that most of the facts or all of the facts stated as stated are true and correct, but I presented them as factual assumptions. I didn't perform any independent investigation of the facts to determine the accuracy of those facts.

Q. And, fair enough, I just wanted to make sure that if someone were to pick this up and miss -- pick it up on page 20, start reading on page 25 and not have read paragraph 58, that they understand that those statements are statements of assumptions, not statements of facts based on your investigation of the facts?

A. That's a fair statement.

Q. That's true of all statements that appear to be statements of facts in your report, correct, they are assumptions?

A. No, that's not true.

In section 4, beginning on page 37, I do believe I make specific references to specific documents that were reviewed.

Which is not to say there aren't assumptions in there, as well, but I believe

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a number of these facts were verified to the extent that the documentation indicated them to be so.

Q. I guess I'm really now not understanding. I think it's important that I do try to understand.

You are referring to section 4 that begins on what page?

A. Thirty-seven.

Q. So this is Roman IV, not section 4 that begins on page 26?

A. That's correct.

Q. So Roman IV through page 43, correct?

A. Yes, sir.

Q. And just so I understand correctly, that in certain statements here, you set forth what was reflected in documents, correct?

A. Reflected in the footnoted documents, yes.

Q. Did you do anything to determine whether or not those documents were accurate?

MR. BUTLER: I object to the form

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2 of the question.
3 A. You'll have to define what you mean
4 by accurate. They were to the best of my
5 knowledge and belief, the documents.

6 Q. For example, and this is an
7 extreme, but I just want to understand your
8 methodology.

9 If a document said Joe Lernout
10 killed his mother, you did nothing to
11 determine whether, in fact, Joe Lernout
12 killed his mother?

13 MR. BUTLER: Objection to form.

14 A. I don't like that exhibit. If a
15 KPMG document said we performed this
16 procedure and this is how we did it and here
17 are the documents we found to support that, I
18 assume that's what they did.

19 I didn't interrogate or interview
20 any of the people who authored the documents.
21 I assume the documents provided in the KPMG
22 file were accurate reflected what they were
23 purported to reflect, unless I've stated
24 otherwise, which I may have someplace along
25 the way.

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2 Q. So the only documents that you're
3 referring to in Roman IV are KPMG work
4 papers?

5 A. I would have to look at the
6 footnotes.

7 No, sir, there were references to
8 BDB Bates numbers. There is at least one
9 reference there.

10 Q. Can you identify that for me?

11 A. No, sir.

12 Do you mean read the number?

13 Q. Just point me to the page.

14 A. I'm sorry, 41. I thought you
15 wanted me to tell you what was on that
16 document from memory.

17 Footnote 129.

18 Q. Any other non-KPMG work papers that
19 are reflected in Roman IV?

20 MR. BUTLER: Objection to form.

21 A. I don't see any as I sit here
22 looking at them.

23 Let me clarify, some of the factual
24 assumptions made in this report, as
25 referenced in the report, were from the audit

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2 committee report.

3 Q. Okay. Did you reject any facts
4 from the audit committee report?

5 MR. BUTLER: Objection to form.

6 A. Any facts or opinions?

7 Q. Facts.

8 A. The portion of the audit committee
9 report that addressed the issues that I was
10 looking at, I don't recall that I
11 reflected -- I don't recall that I rejected
12 any facts, but, again, there may have been
13 facts in there that I may have rejected that
14 had to do with other aspects of the
15 transaction or earlier transactions.

16 I don't know what you mean by
17 reject.

18 Q. Did you assume that the facts set
19 forth in the audit report were true?

20 MR. BUTLER: Objection to form.

21 A. I would have to go back and reread
22 the report.

23 I don't remember. When you say
24 that, they may have used some terminology
25 that I didn't feel comfortable with or I

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2 didn't feel accurately reflected or I felt
3 was ambiguous. I would have to go back and
4 reread it.

5 Q. Fair enough.

6 Is this a fair statement, if the
7 facts that you were asked to assume were
8 inaccurate, then your opinions would be
9 different?

10 A. That's not fair to assume. As a
11 global statement, clearly, it would depend on
12 what facts you're referring to.

13 If the facts proved to be
14 different, they may or may not be relevant to
15 the opinions I expressed.

16 If, in fact, they are different, in
17 what way are they different? What is the
18 order of magnitude of the difference and how
19 does that effect my overall opinion?

20 So if it proved to be the case that
21 some of the facts on which I stated that I
22 based my opinion proved to be incorrect or
23 inaccurate, I would have to go back and
24 review those facts and circumstances to make
25 a determination as to whether or not that has

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any effect on the opinion that I expressed and I actually indicated that in section 1, that any additional information that would change those underlying facts, that's one reason I disclose all of the facts that I'm relying on in my opinion -- in my report.

Q. Are any of the facts that you disclose in your -- are any of the -- they're just factual assumptions, correct?

A. They're factual assumptions, presumably they're factual.

Q. Why do you presume that?

A. Well, I presume that some of the -- they're factual assumptions.

Q. Okay. And who do you believe would -- is more likely to provide complete and unvarnished facts regarding this -- the events at issue here, the United States Security and Exchange Commission or Dexia's counsel?

MR. BUTLER: Objection to form.

You guys really like the SEC.

You can answer the question.

A. I believe that the factual

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A. Specifically by name?

Q. Yes.

A. No.

Q. By category?

A. I know there have been a number of depositions in this case.

Specifically where they derived the facts that they asked me to assume in this case, I couldn't tell you.

Q. Because you had said you don't know who the SEC interviewed.

Do you know who Dexia's counsel interviewed?

A. No.

Q. And you know that there were depositions in this case, but you chose not to read any?

A. I don't believe the depositions -- again, I made the factual assumptions clearly stated in my report. I wasn't engaged and did not conduct a thorough independent investigation of the underlying facts and circumstances in order to test the veracity of the facts and circumstances that I assumed

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assumptions upon which I was asked to rely provided to me by counsel -- I'm trying to find a way to answer your question.

Q. Just try answering it.

A. I believe what I was told by counsel, I reflected that in this report, I've done that, so opposing counsel and opposing counsel's expert has an opportunity to test the veracity of those assumptions.

I tried to write a report. I believe I did write a report that was transparent in that sense. I don't know anything -- I don't know about the SEC. I don't know anybody at the SEC. I don't know what kind of time and effort was put into this. I don't know what kind of documents the SEC consulted, who they consulted, who they interviewed, if they interviewed anyone.

I don't know the bases upon which they or the thoroughness upon which they based their conclusions or recitation or interpretation of the facts.

Q. In providing the facts, do you know who Dexia's counsel consulted?

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in my report and that is why I disclosed what facts I was relying on.

Q. Just so it's clear, you did not conduct a thorough and complete investigation to determine any facts in this case, correct?

A. To determine the veracity of the facts in this case, my understanding is there are over a million and a half pages of documents.

I did not review all of those documents. I did not look for documents for the purpose of determining whether or not the document was complete or factually correct.

Q. Okay. If you look at page 4 of your report, paragraph 4-C, Roman I.

You refer to these transactions, correct?

A. These transactions, yes, sir.

Q. What transactions?

A. The specific transactions at issue that are described in section 4.

Q. What are they?

A. Those were the licensing transactions involving the Radial LDCs, the

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2 LIC, LDCs and the LDF LDCs.

3 Q. Just so it's clear, those
4 transactions are not described in your
5 report.

6 What is described is assumptions
7 about those transactions that you were asked
8 to make, correct?

9 MR. BUTLER: Objection to form.

10 A. As far as I know, the transactions,
11 to the extent that they are described in my
12 report are, as far as they go, accurate
13 descriptions of the transactions that took
14 place.

15 Frankly, some of those
16 descriptions, to some extent or to some
17 considerable extent, those transactions or my
18 description of those transactions was, in
19 part, derived from the complaints I cited in
20 Exhibit 3 to my report.

21 Q. Is it your position that all the
22 facts set forth in those complaints are true
23 and correct?

24 A. Absolutely not.

25 Q. How do you decide which were true

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2 answers from this witness.

3 MR. HARRIS: The truth will allow
4 it.

5 Q. Mr. Larue, you said that exhibit --
6 section 4 sets forth the true facts, to the
7 best of your knowledge?

8 MR. BUTLER: It's not true.

9 A. The facts, to the best of my
10 knowledge.

11 MR. BUTLER: Object to the
12 question.

13 MR. HARRIS: Read back his last
14 answer.

15 (Record read.)

16 Q. You say as far as I know. The
17 transactions are accurate and all you know,
18 because you didn't do an independent
19 investigation, is what you were told by
20 counsel, correct?

21 A. No, sir.

22 Q. What else did you do?

23 A. As I explained, I also had -- I
24 also reviewed and made an initial
25 understanding of my facts from

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2 and correct and which weren't?

3 MR. BUTLER: Objection to form. He
4 said he conducted no factual
5 investigation and he hasn't been asked
6 or done any determination as to whether
7 any particular fact in this case is true
8 or not.

9 MR. HARRIS: But he keeps saying,
10 to the best of my knowledge, they're
11 true, and I want to know what that
12 knowledge is, so I'm going to keep
13 asking him.

14 MR. BUTLER: If you think he is
15 wrong, tell him what's wrong. His
16 opinions are his opinions. His factual
17 assumptions are clearly set forth.

18 I don't -- you're spending all your
19 time asking about his factual
20 assumptions when you should be asking
21 about his opinions, so if you think any
22 of them are wrong, you can --

23 MR. HARRIS: I saw your deposition
24 yesterday.

25 MR. BUTLER: You'll get much better

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2 representations made, I believe by some -- I
3 don't remember who the complaint was issued
4 by or who -- I'm not an attorney, so I don't
5 really understand, but I did read that
6 complaint.

7 There were factual assertions being
8 made in that report, okay, that were part of
9 my summary of the facts in section 4 of my
10 report, so it wasn't -- my understanding of
11 the facts or the factual assumptions didn't
12 derive solely from counsel, it derived also,
13 in particular, from the report of the audit
14 committee from the text of whatever complaint
15 that I have cited in my report.

16 Q. So let me make sure I understand.

17 When you say that they are
18 accurate, as far as you know, that is based
19 on what you were told by Dexia's counsel,
20 what plaintiffs alleged in two complaints,
21 but not the Baker plaintiffs and by the audit
22 committee report, correct?

23 A. One more thing.

24 Q. Okay.

25 A. That is, that I've never seen

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2 anything that I would have considered to have
3 contradicted those facts.

4 Q. Did you ask for anything?

5 A. Obviously, I asked for the work
6 papers that had been identified from the KPMG
7 work papers to independently review.

8 Did I ask for anything else? I
9 don't recall that I did.

10 Q. And so who decided what documents
11 you would review?

12 A. At the end of the day, I would say
13 I made that decision, but let me explain.

14 The documents were provided to me
15 from Cornerstone Research. I didn't request
16 specific documents. I don't believe I
17 requested specific documents other than the
18 KPMG work papers anywhere along the way.

19 However, in my discussions with
20 Cornerstone at the very beginning of this
21 engagement, I wanted it understood very
22 clearly if somewhere along the way, I felt
23 there were documents I needed to see, that
24 that was my decision to make, not counsel's
25 decision, not Research Associates or

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2 correct?

3 A. That's correct.

4 Q. And so when you say, I haven't seen
5 anything, the only thing you have seen is
6 what Dexia's counsel thought you should see,
7 correct?

8 MR. BUTLER: Objection to form.

9 A. Again, I would disagree with that.
10 The only thing I've seen is what was provided
11 to Cornerstone Research and provided to me
12 presumably by counsel.

13 In the process of identifying what
14 opinions I would render and what facts and
15 circumstances I needed in order to be able to
16 render those opinions I made a decision that
17 the documents that I had reviewed were
18 sufficient, assuming adequate disclosure in
19 my report, which I believe I had done to
20 render those opinions, so the documents I
21 reviewed in this case, other than the KPMG
22 documents, are documents that were provided
23 to me and not requested by me.

24 Q. Let's just look at paragraph 73 on
25 page 26. At the end of paragraph 23, you

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2 Cornerstone Associates' decision to make.

3 Q. But you didn't ask for any
4 additional documents?

5 A. I didn't, and one of the reasons I
6 didn't is that I felt that the facts that I
7 had available to me were sufficient to render
8 the opinions that I've rendered in this
9 report. I didn't feel there was a scope
10 limitation of any sort, by virtue of not
11 having these documents.

12 The other thing that is really
13 critical here is the fact that, again, my
14 report discloses the factual assumptions upon
15 which I based my opinions and, of course, I
16 know that you all are going to get a copy of
17 this. Your expert is going to get a copy of
18 this and, presumably, if there were any major
19 problems in some of the factual statements,
20 that would be brought to my attention and I
21 would have an opportunity to reevaluate.

22 Q. When you say you haven't seen
23 anything that contradicts it, you indicated
24 there are millions of documents, lots of
25 depositions, none of which you asked to see,

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2 said, Moreover, Messrs. Lernout, Hauspie and
3 Willard did not directly or indirectly own
4 any equity interest in LDF and did not
5 participate in the management of LDF,
6 correct?

7 A. Yes.

8 Q. And it is fair to say that you have
9 done no investigation as to whether or not
10 Messrs. Lernout, Hauspie or Willard did, in
11 fact, participate in the management of LDF?

12 A. That's correct.

13 Q. And so you were -- that is solely
14 and whether or not there are documents out
15 there that indicate that that is inaccurate,
16 you neither saw them, nor asked to see them?

17 A. I don't recall seeing any documents
18 that indicated that. How do you prove a
19 negative? That indicated that they did
20 not -- I don't recall seeing documents that
21 indicated that they didn't participate in
22 management and I don't know what documents
23 would be available for that, but I didn't ask
24 to see documents. That's a factual
25 assumption that I've made.

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Q. You didn't ask for documents, you didn't ask, are there any documents that show that they did participate in the management of LDF?

A. That's correct.

Q. And you would agree that the documents in this matter, you have reviewed a very small subset, correct?

A. If, in fact, there are 1.5 or thereabouts, millions of documents out there, I've looked at a lot of documents, but certainly it's a small subset of what's out there.

Q. You have not reviewed any testimony or interviews of individuals relating to this matter, correct?

A. I've seen, I've looked at some of the depositions or pages out of depositions. Certainly the depositions in Mr. Love's report, cited in Mr. Love's report.

I saw the comments that he was referring to in his report, so certainly I've seen that, but that's, I'm sure, a very small subset.

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Q. It's fair to say that you really were not interested in determining whether or not these factual assumptions were accurate or inaccurate?

MR. BUTLER: Objection to form.

A. That's absolutely not true. I certainly wanted these factual assumptions to be correct. If I had believed that any of these factual assumptions were incorrect or had seen something to indicate that they were incorrect, I would have had a discussion with counsel about that.

Once again, I wasn't retained. I did not conduct any independent investigation of the underlying facts and circumstances to make the determinations about some of the factual assumptions that were stated very clearly in my report.

Q. And just so I make sure, if any of the facts in your report are inaccurate, one cannot know whether your opinion would change as a result of that inaccuracy, correct?

MR. BUTLER: Objection to form.

A. Well, let me talk about accurate

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and inaccurate.

First of all, there may be factual statements that are unambiguous that a certain dollar amount is \$12 and it turns out to be \$14. There is an accuracy issue there.

Other facts lend themselves to various interpretations, so it may be there are facts and circumstances out there that would lend themselves to one interpretation by one person, a different interpretation by someone else, so we're using the term accurate versus inaccurate is probably a little bit of an overstatement for those facts and circumstances, but more to the point, if I felt there were facts and circumstances that were inaccurate, again, what I do is reevaluate my opinions in the light of those facts and circumstances and determine whether or not any sort of adjustment would be required or qualification would be required to any of my opinions I've rendered in this report.

Q. Let me ask this question just so I can understand.

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If a juror was to determine that one of the facts that you set forth in your report was inaccurate, he would not know whether or not, as a result of that inaccuracy, you would or would not change your opinion, correct?

MR. BUTLER: Objection to form.

A. I'm not going to agree to that. What fact are you talking about?

Q. I don't know what fact he is going to find inaccurate.

A. I can't speak to the subjective state of mind of a juror. It depends what fact you're talking about. I think maybe you should ask that question again.

MR. HARRIS: Can you read it back.
(Record read.)

A. It depends on the context. It depends on what fact it is.

Q. Exactly.

A. Yes. If I said in my report I assumed that this transaction took place on March 28, 1998, in fact, it occurred on March 23rd of 1998, to the naked eye, that would,

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<p style="text-align: right;">Page 138</p> <p>1 D. Larue</p> <p>2 to my mind, indicate that while the factual</p> <p>3 assumption may not have been 100 percent</p> <p>4 accurate, it's not substantive insofar it</p> <p>5 goes to the facts upon which I -- that's not</p> <p>6 what I relied on in rendering my opinion. It</p> <p>7 depends on what facts you're talking about.</p> <p>8 Q. So certain facts, if they were</p> <p>9 inaccurate, could change your opinion,</p> <p>10 correct?</p> <p>11 A. Certainly. Not all.</p> <p>12 Q. Is it fair to say only you know</p> <p>13 which facts, if found to be inaccurate, would</p> <p>14 or would not change your opinion?</p> <p>15 MR. BUTLER: Object to the form.</p> <p>16 A. I don't believe that is fair to</p> <p>17 say.</p> <p>18 I believe that the rationale behind</p> <p>19 the opinions rendered is adequately disclosed</p> <p>20 or fully disclosed in this report.</p> <p>21 If you understand the rationale</p> <p>22 behind the opinion, you can see, if you take</p> <p>23 the time and the effort to look at this</p> <p>24 report and read it and understand it,</p> <p>25 admittedly GAAP is extraordinarily complex,</p>	<p style="text-align: right;">Page 140</p> <p>1 D. Larue</p> <p>2 know what you're referring to when you</p> <p>3 ask a question.</p> <p>4 (Record read.)</p> <p>5 MR. BUTLER: Can you tell me what</p> <p>6 you were referring to?</p> <p>7 Q. Do you understand my question?</p> <p>8 MR. BUTLER: Are you talking</p> <p>9 Exhibit 2, paragraph 2, page 2, Roman</p> <p>10 numeral II?</p> <p>11 Q. Can you answer the question.</p> <p>12 A. What I was asked to do was clearly</p> <p>13 set forth on page 4 -- 3 and 4 and I was not</p> <p>14 asked to opine as to the -- whether or not</p> <p>15 L&H's -- I'm trying to remember how you asked</p> <p>16 the question. I wasn't asked to opine as to</p> <p>17 whether L&H's accounting was correct.</p> <p>18 Q. That wasn't my question.</p> <p>19 Is it accurate that you were not</p> <p>20 asked to express an opinion whether or not</p> <p>21 L&H's revenue recognition related to the</p> <p>22 transactions described in your report were</p> <p>23 improper under then existing GAAP based on</p> <p>24 the loans made by Artesia?</p> <p>25 A. That's correct.</p>
<p style="text-align: right;">Page 139</p> <p>1 D. Larue</p> <p>2 especially as it applies to research and</p> <p>3 development, but if one were to take the</p> <p>4 time, you could read the rationale behind my</p> <p>5 opinion. You could see the facts on which I</p> <p>6 formulated that opinion and you could make,</p> <p>7 in some cases, probably a pretty good</p> <p>8 determination or at least good guess as to</p> <p>9 what facts might have a bearing on the</p> <p>10 opinion and what kind of facts might result</p> <p>11 in a change of that opinion.</p> <p>12 Q. If you look at two, is it fair to</p> <p>13 say that you were not asked to render an</p> <p>14 opinion as to whether or not L&H's revenue</p> <p>15 recognition related to these transactions was</p> <p>16 improper under then existing GAAP based on</p> <p>17 the loans made by Artesia?</p> <p>18 MR. BUTLER: What were you</p> <p>19 referring to? You said based on two.</p> <p>20 A. You mean Roman numeral II on pages</p> <p>21 3 and 4.</p> <p>22 MR. HARRIS: Can you read the</p> <p>23 question back.</p> <p>24 MR. BUTLER: I don't know what</p> <p>25 you're referring. I have a right to</p>	<p style="text-align: right;">Page 141</p> <p>1 D. Larue</p> <p>2 Q. Have you reached such an opinion?</p> <p>3 A. No.</p> <p>4 Q. If you look at paragraph 4-C Roman</p> <p>5 F-III, you refer to an outside observer.</p> <p>6 I'm not sure what you mean by an</p> <p>7 outside observer.</p> <p>8 A. An opinion as to whether an outside</p> <p>9 observer could determine L&H's accounting</p> <p>10 treatment for these transactions based on a</p> <p>11 review of public filings and press releases.</p> <p>12 An outside observer who was -- in</p> <p>13 other words, based on just a review of the</p> <p>14 public disclosures and based on just a review</p> <p>15 of the information provided to the SEC, would</p> <p>16 it have been apparent to someone reviewing</p> <p>17 those disclosures what L&H's accounting</p> <p>18 treatment for the Radial LIC and LDF revenues</p> <p>19 had been.</p> <p>20 Q. Now, if you look at paragraph 5,</p> <p>21 you say your understanding of the facts, it</p> <p>22 really summarizes the assumptions you made,</p> <p>23 correct, you were asked to make?</p> <p>24 A. My understanding of the facts and</p> <p>25 circumstances upon which I was asked to rely</p>

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<p style="text-align: right;">Page 142</p> <p>1 D. Larue</p> <p>2 upon, yes.</p> <p>3 Q. And your understanding, again, is</p> <p>4 not based on an independent investigation,</p> <p>5 but based on assumptions you were asked to</p> <p>6 make?</p> <p>7 A. That's correct. I did not make an</p> <p>8 independent investigation, but the facts, to</p> <p>9 my mind, were not contradicted by any</p> <p>10 documents I reviewed.</p> <p>11 Q. It then says, If and when any</p> <p>12 additional documentation, deposition</p> <p>13 testimony or other information becomes</p> <p>14 available to me.</p> <p>15 What do you mean by available to</p> <p>16 you?</p> <p>17 A. As this trial progresses, I assumed</p> <p>18 there would be additional documentation,</p> <p>19 additional depositions and other information</p> <p>20 that may become available to me.</p> <p>21 Q. But so far, you have had available</p> <p>22 to you hundreds of depositions, correct?</p> <p>23 A. I don't know about hundreds of</p> <p>24 depositions, but I've had available to me in</p> <p>25 the sense that they're out there and I didn't</p>	<p style="text-align: right;">Page 144</p> <p>1 D. Larue</p> <p>2 needed to make a change in my assumptions</p> <p>3 and/or my opinions.</p> <p>4 Q. Of course, that would be true if</p> <p>5 somebody handed you something and showed you</p> <p>6 it was false, you would reevaluate, but the</p> <p>7 phrase, becomes available to me, you were not</p> <p>8 suggesting that there were not upwards of a</p> <p>9 million documents that were available to you</p> <p>10 prior to the time you reviewed -- you created</p> <p>11 your report, correct?</p> <p>12 MR. BUTLER: Objection to form.</p> <p>13 A. I'm not suggesting that.</p> <p>14 Q. And now, you then go on to your</p> <p>15 summary of conclusions and your first</p> <p>16 conclusion is, Given the uncertainty</p> <p>17 surrounding the underlying facts and</p> <p>18 circumstances of the software licensing</p> <p>19 agreements between L&H and the Language</p> <p>20 Development Companies at the time of the</p> <p>21 license fees were recognized as revenue by</p> <p>22 L&H.</p> <p>23 Do you see that?</p> <p>24 A. I do.</p> <p>25 Q. What uncertainty are you referring</p>
<p style="text-align: right;">Page 143</p> <p>1 D. Larue</p> <p>2 ask for them.</p> <p>3 Q. You're not referring to those, are</p> <p>4 you?</p> <p>5 A. No.</p> <p>6 Q. Because you haven't asked for any</p> <p>7 deposition testimony, correct?</p> <p>8 A. That's correct.</p> <p>9 Q. When you say, any additional</p> <p>10 documentation, you mean any additional</p> <p>11 documentation that hasn't already been</p> <p>12 produced in this case because that's already</p> <p>13 been available to you?</p> <p>14 MR. BUTLER: Objection to form.</p> <p>15 A. I wouldn't say that. I would say</p> <p>16 certainly, old documentation, new</p> <p>17 documentation, new facts coming to light</p> <p>18 somewhere along the way, additional</p> <p>19 documents.</p> <p>20 Certainly if I found something that</p> <p>21 indicated one of the factual assumptions on</p> <p>22 which I based my opinions were incorrect,</p> <p>23 then I would evaluate that -- my new</p> <p>24 understanding of the facts based on those</p> <p>25 documents to determine whether or not I</p>	<p style="text-align: right;">Page 145</p> <p>1 D. Larue</p> <p>2 to?</p> <p>3 A. It's just a general statement, it's</p> <p>4 my impression there was a great deal of</p> <p>5 uncertainty as to the underlying facts and</p> <p>6 circumstances that may have been relevant in</p> <p>7 reaching an accounting conclusion.</p> <p>8 Q. You're not suggesting that the</p> <p>9 facts and circumstances were not known, are</p> <p>10 you?</p> <p>11 MR. BUTLER: Objection.</p> <p>12 Known to who?</p> <p>13 MR. HARRIS: I will ask that next</p> <p>14 question.</p> <p>15 A. I certainly am suggesting that not</p> <p>16 all facts were known to all parties.</p> <p>17 Q. We know that the true facts weren't</p> <p>18 provided to the investors in L&H, everybody</p> <p>19 knows that, that's why we're here.</p> <p>20 MR. BUTLER: Objection. You may</p> <p>21 think you're being funny, but it's not</p> <p>22 that humorous.</p> <p>23 Q. As used here, who are you saying</p> <p>24 was uncertain about the facts and</p> <p>25 circumstances of the licensing agreements?</p>

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<p style="text-align: right;">Page 146</p> <p>1 D. Larue</p> <p>2 MR. BUTLER: Can I hear the</p> <p>3 question again, please.</p> <p>4 (Record read.)</p> <p>5 MR. BUTLER: Objection to form.</p> <p>6 A. I will answer the question again,</p> <p>7 and that is that I believe that all of the</p> <p>8 facts and circumstances were not known to all</p> <p>9 of the parties. I don't know who knew what,</p> <p>10 but I certainly do have an impression that</p> <p>11 there were a lot of facts that were unknown</p> <p>12 to various parties or various -- I won't say</p> <p>13 parties, but just in general, people involved</p> <p>14 in some way or form or fashion with these</p> <p>15 transactions.</p> <p>16 Q. Let me do it this way: Was Dexia</p> <p>17 uncertain about the facts and circumstances</p> <p>18 of the software licensing agreements between</p> <p>19 L&H and the Language Development Companies?</p> <p>20 MR. BUTLER: Objection to form.</p> <p>21 A. What facts?</p> <p>22 Q. What facts you're referring to.</p> <p>23 A. I'm sure -- first of all, who at</p> <p>24 Dexia and at what point in time are you</p> <p>25 referring to?</p>	<p style="text-align: right;">Page 148</p> <p>1 D. Larue</p> <p>2 fees.</p> <p>3 MR. BUTLER: Pardon me, I</p> <p>4 misunderstood.</p> <p>5 Q. At the time the licensing fees were</p> <p>6 recognized by L&H, was L&H uncertain</p> <p>7 regarding the underlying facts and</p> <p>8 circumstances of the software licensing</p> <p>9 agreement between L&H and the Language</p> <p>10 Development Companies?</p> <p>11 MR. BUTLER: Objection to form.</p> <p>12 A. I don't know who at L&H. Who do you</p> <p>13 mean, L&H? L&H can't have an awareness,</p> <p>14 people at L&H, the CFO, the accountants,</p> <p>15 members of the board of directors? Who are</p> <p>16 you referring to at L&H?</p> <p>17 Q. Who were you referring to as being</p> <p>18 uncertain?</p> <p>19 A. I'm referring to just in general,</p> <p>20 there seemed to be a lot of facts and</p> <p>21 circumstances that parties were not aware of</p> <p>22 at the time these fees were recognized as</p> <p>23 revenue that may have had a bearing on the</p> <p>24 accounting for that revenue.</p> <p>25 Q. And who -- was Mr. Lernout</p>
<p style="text-align: right;">Page 147</p> <p>1 D. Larue</p> <p>2 Q. This is your conclusion, correct?</p> <p>3 A. Yes.</p> <p>4 Q. This is your opinion.</p> <p>5 What facts and circumstances are</p> <p>6 you referring to in the first line of</p> <p>7 paragraph 6 of your report?</p> <p>8 A. The facts and circumstances at the</p> <p>9 time the license fees were recognized as</p> <p>10 revenue.</p> <p>11 Q. What facts and circumstances?</p> <p>12 A. The facts and circumstances.</p> <p>13 Q. Okay. Which facts and which</p> <p>14 circumstances?</p> <p>15 A. Just in general.</p> <p>16 Q. Just in general. Okay.</p> <p>17 MR. BUTLER: He is asking you to</p> <p>18 clarify your question. That wasn't his</p> <p>19 answer.</p> <p>20 Am I right, were you asking if you</p> <p>21 wanted a general answer?</p> <p>22 THE WITNESS: I was.</p> <p>23 Facts and circumstances in general</p> <p>24 that may have had a bearing on the</p> <p>25 accounting treatment of these license</p>	<p style="text-align: right;">Page 149</p> <p>1 D. Larue</p> <p>2 uncertain about the facts and circumstances</p> <p>3 of the software licensing agreements between</p> <p>4 L&H and the Language Development Companies?</p> <p>5 MR. BUTLER: Objection to form.</p> <p>6 A. How would I know that; A, how would</p> <p>7 I know that and; B, what facts and</p> <p>8 circumstances are you referring to that he</p> <p>9 may have been uncertain about? That's a</p> <p>10 question I can't answer.</p> <p>11 Q. What did you use?</p> <p>12 A. I don't know what facts and</p> <p>13 circumstances Mr. Lernout was aware of at the</p> <p>14 time these fees were recognized by L&H.</p> <p>15 Q. So it's fair to say you don't know</p> <p>16 whether or not Mr. Lernout had any</p> <p>17 uncertainty relying the underlying facts and</p> <p>18 circumstances?</p> <p>19 A. I don't know that. I don't know</p> <p>20 what he thought, what he knew.</p> <p>21 Q. Do you know if anyone at Dexia was</p> <p>22 uncertain about the underlying facts and</p> <p>23 circumstances of the software licensing</p> <p>24 agreements between L&H and the Language</p> <p>25 Development Companies at the time the license</p>

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<p>1 D. Larue</p> <p>2 fees were recognized as revenue by L&H?</p> <p>3 A. I had a sense there were a lot of</p> <p>4 relevant facts that -- again, who at Dexia</p> <p>5 are you referring to?</p> <p>6 Q. Anyone. This is your conclusion.</p> <p>7 MR. BUTLER: I'll object to the</p> <p>8 form. He said his conclusion is not</p> <p>9 about the mental states, not about any</p> <p>10 individual.</p> <p>11 You can continue to question him</p> <p>12 about that, though.</p> <p>13 Q. Is it fair to say that you are</p> <p>14 talking about whether or not the recognition</p> <p>15 of these fees as revenue was clearly improper</p> <p>16 under GAAP in paragraph 6?</p> <p>17 A. I'm talking about whether or not it</p> <p>18 was clearly improper under GAAP.</p> <p>19 Q. And it is true, is it not, that</p> <p>20 uncertainty by certain people about the facts</p> <p>21 and circumstances has absolutely no bearing</p> <p>22 on whether or not the recognition was clearly</p> <p>23 improper under GAAP, correct?</p> <p>24 A. I don't really understand your</p> <p>25 question.</p>	<p>1 D. Larue</p> <p>2 Q. What I'm asking is, whose</p> <p>3 uncertainty mattered to you in reaching your</p> <p>4 conclusion set forth in paragraph 6 of your</p> <p>5 report?</p> <p>6 MR. BUTLER: Objection to form.</p> <p>7 A. I guess it depends on -- in my</p> <p>8 opinion -- clearly improper to whom?</p> <p>9 Q. Under GAAP.</p> <p>10 A. Insofar as the uncertainty</p> <p>11 surrounding the underlying facts and</p> <p>12 circumstances, would L&H's revenue</p> <p>13 recognition had been clearly improper to</p> <p>14 another observer.</p> <p>15 Q. So this is not -- your opinion is</p> <p>16 not whether or not it was clearly improper</p> <p>17 under GAAP, but it was clearly improper under</p> <p>18 GAAP to another person, an outside observer?</p> <p>19 MR. BUTLER: Objection to form.</p> <p>20 A. Was it clearly improper based on --</p> <p>21 excuse me.</p> <p>22 The information that seems to have</p> <p>23 been available at the time given the</p> <p>24 uncertainty of all these different things</p> <p>25 that I've listed here in this paragraph, was</p>
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<p>1 D. Larue</p> <p>2 Q. It doesn't matter if in 1999, I was</p> <p>3 uncertain about the underlying facts and</p> <p>4 circumstances, that would have no bearing on</p> <p>5 whether or not the recognition of revenue was</p> <p>6 clearly improper under GAAP, is that correct?</p> <p>7 A. That's correct.</p> <p>8 Q. There are only certain parties or</p> <p>9 persons whose uncertainty would matter with</p> <p>10 regard to the determination as to whether or</p> <p>11 not the recognition of these fees were</p> <p>12 clearly improper under GAAP would be</p> <p>13 relevant, correct?</p> <p>14 A. I'm still not following you.</p> <p>15 Given the uncertainty surrounding</p> <p>16 the underlying facts and circumstances of the</p> <p>17 software agreements between L&H, and it goes</p> <p>18 on and then it concludes, L&H's recognition</p> <p>19 of these fees as revenue in 1999 -- 1998 and</p> <p>20 '99 did not, in my opinion, make L&H's</p> <p>21 recognition of these revenues clearly</p> <p>22 improper under GAAP.</p> <p>23 Q. In reaching that conclusion, you</p> <p>24 focused on uncertainty, correct?</p> <p>25 A. That's correct.</p>	<p>1 D. Larue</p> <p>2 their revenue recognition clearly improper</p> <p>3 under GAAP and I opined that it was not</p> <p>4 clearly improper.</p> <p>5 Q. I understand that.</p> <p>6 A. It was not apparent to the naked</p> <p>7 eye that the accounting for these revenues</p> <p>8 was clearly improper.</p> <p>9 Q. When you say, the naked eye, the</p> <p>10 naked eye of whom?</p> <p>11 A. Possibly of anybody.</p> <p>12 Q. Right. Not limited to KPMG, right,</p> <p>13 your opinion is not limited to KPMG?</p> <p>14 MR. BUTLER: Objection to form.</p> <p>15 Go ahead.</p> <p>16 A. I don't refer to KPMG in this</p> <p>17 paragraph, in this opinion.</p> <p>18 Q. You are saying that -- let me just</p> <p>19 make sure I understand what you're saying in</p> <p>20 paragraph 6.</p> <p>21 You're saying in paragraph 6, that</p> <p>22 an outside observer could not tell whether or</p> <p>23 not the accounting for -- strike all of that.</p> <p>24 Let me start over.</p> <p>25 It is correct, is it not, that in</p>

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<p>1 D. Larue</p> <p>2 paragraph 6, you were opining that it would</p> <p>3 not be clearly improper -- let me try again.</p> <p>4 Sometimes I can't ask a right question.</p> <p>5 It is correct, is it not, that in</p> <p>6 paragraph 6, you were opining that it would</p> <p>7 not be apparent to an outside observer that</p> <p>8 L&H's recognition of these fees as revenue in</p> <p>9 1998 and 1999 was clearly improper under</p> <p>10 GAAP, correct?</p> <p>11 A. It would not have been apparent to</p> <p>12 an outside observer, depending on what you</p> <p>13 mean by outside observer, but certainly it</p> <p>14 would not be apparent to an outside observer</p> <p>15 that this revenue was necessarily even</p> <p>16 recognized, let alone proper under GAAP.</p> <p>17 Q. Have I captured the entirety of</p> <p>18 your opinion in paragraph 6?</p> <p>19 MR. BUTLER: Objection to form.</p> <p>20 A. No, I don't believe so. I believe</p> <p>21 that depending upon what party you're looking</p> <p>22 at, that there may not have been enough facts</p> <p>23 and circumstances -- there was uncertainty in</p> <p>24 the facts and circumstances that you would</p> <p>25 need to make or need to understand in order</p>	<p>1 D. Larue</p> <p>2 Q. In paragraph 6, are you opining</p> <p>3 that as an objective matter, L&H's</p> <p>4 recognition of these fees as revenue in 1998</p> <p>5 and 1999 were or were not clearly improper</p> <p>6 under GAAP?</p> <p>7 MR. BUTLER: Objection to form.</p> <p>8 A. I'm having trouble with the word</p> <p>9 objective that you used. I will try to give</p> <p>10 you the answer.</p> <p>11 The ultimate determination as to</p> <p>12 whether or not those revenues were proper</p> <p>13 would, in some respects, involve a subjective</p> <p>14 evaluation of the underlying facts and</p> <p>15 circumstances and would involve, for example,</p> <p>16 also possibly a substantive evaluation of</p> <p>17 certain terms and standards that might be</p> <p>18 applicable under GAAP, so there would be a</p> <p>19 subjective element.</p> <p>20 What I'm saying is that there was</p> <p>21 no objective basis based on all of these</p> <p>22 factors that I've indicated in this report or</p> <p>23 in this paragraph to make a determination</p> <p>24 that revenue recognition was clearly</p> <p>25 improper.</p>
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<p>1 D. Larue</p> <p>2 to be able to apply GAAP and determine</p> <p>3 whether or not or render an opinion whether</p> <p>4 revenue recognition was appropriate.</p> <p>5 Q. And --</p> <p>6 MR. HARRIS: Can you read that</p> <p>7 back.</p> <p>8 (Record read.)</p> <p>9 Q. In paragraph 6, are you expressing</p> <p>10 an opinion as to whether or not, as an</p> <p>11 objective manner, the manner in which L&H</p> <p>12 accounted for the transactions reflected in</p> <p>13 your report was clearly improper?</p> <p>14 A. To an outside observer, is that</p> <p>15 what you just said?</p> <p>16 Q. No.</p> <p>17 A. Well, to an observer who didn't</p> <p>18 have an understanding of the facts and</p> <p>19 circumstances that were relevant in</p> <p>20 determining how those licensing fees should</p> <p>21 be reported.</p> <p>22 Q. Let me repeat my question because I</p> <p>23 think you may have lost it.</p> <p>24 MR. BUTLER: Just give me chance to</p> <p>25 object.</p>	<p>1 D. Larue</p> <p>2 Q. For who to make that determination?</p> <p>3 MR. BUTLER: Objection to form.</p> <p>4 The witness already testified -- he is</p> <p>5 not testifying about what any particular</p> <p>6 person believed at the time.</p> <p>7 A. Again, there is a fair amount of</p> <p>8 subjectivity in the application of some of</p> <p>9 these GAAP rules, substance over form,</p> <p>10 presumptions, reasonableness, probability,</p> <p>11 there are some terms used in the relevant</p> <p>12 GAAP that required a subjective evaluation of</p> <p>13 all of the underlying facts and</p> <p>14 circumstances, so I don't believe that</p> <p>15 necessarily you're going find two people who</p> <p>16 objectively reviewed the same facts and</p> <p>17 circumstances necessarily coming up with the</p> <p>18 same conclusion.</p> <p>19 Q. From what you've just said, it</p> <p>20 seems as though that in your accounting</p> <p>21 classes, there are no right or wrong answers,</p> <p>22 is that correct?</p> <p>23 MR. BUTLER: Objection to form.</p> <p>24 A. Absolutely not.</p> <p>25 Q. Absolutely not?</p>

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<p style="text-align: right;">Page 158</p> <p>1 D. Larue</p> <p>2 A. Absolutely, that is not a correct</p> <p>3 statement.</p> <p>4 There are a great many questions to</p> <p>5 which there are definitive answers and</p> <p>6 objective parties looking at the same facts</p> <p>7 and circumstances can apply the same</p> <p>8 unambiguous rules and come up with the same</p> <p>9 result pretty much spot on every time, but</p> <p>10 there are a great many. GAAP is very</p> <p>11 complicated.</p> <p>12 In many cases, it involves a</p> <p>13 subjective evaluation of facts and</p> <p>14 circumstances that the evaluator believes to</p> <p>15 be relevant, another evaluator may not</p> <p>16 believe to be relevant and an analysis of</p> <p>17 those facts and circumstances and how they</p> <p>18 interface with one another, what is the</p> <p>19 relative weight of this factor versus the</p> <p>20 relative weight of this factor and at the end</p> <p>21 of the day, you end up with an opinion that</p> <p>22 has large subjective elements. That is</p> <p>23 certainly not always the case.</p> <p>24 There are oftentimes, probably more</p> <p>25 often than not, I don't know, there are</p>	<p style="text-align: right;">Page 160</p> <p>1 D. Larue</p> <p>2 licensing fee were recognized as revenue by</p> <p>3 L&H, correct, and it's given the uncertainty,</p> <p>4 correct?</p> <p>5 A. Given the uncertainty and the three</p> <p>6 other --</p> <p>7 Q. Right. The uncertainty, is that</p> <p>8 your opinion, is it a statement of fact or is</p> <p>9 it an assumption of fact?</p> <p>10 A. I'm sorry. In part, it's an</p> <p>11 assumption of fact.</p> <p>12 Q. You say, in part.</p> <p>13 What else is it?</p> <p>14 A. Well, in part, it's not knowing how</p> <p>15 things were going to pan out, but the facts,</p> <p>16 for example, it's my understanding that, you</p> <p>17 know, the guarantees weren't entered into</p> <p>18 until later on in the following year, so at</p> <p>19 the time this was reported as revenue, the</p> <p>20 facts were uncertain as to what extent there</p> <p>21 was an obligation or that -- or to what</p> <p>22 extent those guarantees would ultimately be</p> <p>23 entered into, in other words, at the time we</p> <p>24 recognized -- at the time the revenue was</p> <p>25 recognized, there were some facts that were</p>
<p style="text-align: right;">Page 159</p> <p>1 D. Larue</p> <p>2 definitive answers to many definitive</p> <p>3 questions, but that is not always the case</p> <p>4 and it certainly was not the case here.</p> <p>5 Q. Now, coming back to the</p> <p>6 uncertainty, do you have any facts to suggest</p> <p>7 that there was any uncertainty at L&H</p> <p>8 regarding the underlying -- let me do this.</p> <p>9 In paragraph 6, after the word</p> <p>10 given, there are parentheticals numbered one</p> <p>11 through four. There are then what appear to</p> <p>12 be statements of fact, correct?</p> <p>13 MR. BUTLER: Objection to form. I</p> <p>14 don't understand your question.</p> <p>15 Q. Well --</p> <p>16 MR. BUTLER: If you understand,</p> <p>17 sir, you can answer.</p> <p>18 A. The fact that the license fees</p> <p>19 received from Radial, LIC and LDF were paid</p> <p>20 from the proceeds, yes, that's --</p> <p>21 Q. No, it says given one, that the</p> <p>22 uncertainty surrounding the underlying facts</p> <p>23 and circumstances of the software licensing</p> <p>24 agreements between L&H and Language</p> <p>25 Development Companies at the time of the</p>	<p style="text-align: right;">Page 161</p> <p>1 D. Larue</p> <p>2 uncertain because they were based on future</p> <p>3 events.</p> <p>4 Q. So it is -- the uncertainty there</p> <p>5 that you were referring to are factual</p> <p>6 assumptions and uncertainty as to the future,</p> <p>7 correct?</p> <p>8 MR. BUTLER: Objection to form.</p> <p>9 A. I think that's correct.</p> <p>10 Q. And what is it when you assume that</p> <p>11 there was uncertainty surrounding the</p> <p>12 underlying facts and circumstances, who is it</p> <p>13 that you are assuming had any uncertainty?</p> <p>14 MR. BUTLER: Objection to form.</p> <p>15 A. Well, again, the word uncertainty</p> <p>16 really has two dimensions; one, who knew what</p> <p>17 when and the other, subjectively, how would</p> <p>18 you evaluate those facts, how do you</p> <p>19 interpret those facts and circumstances, what</p> <p>20 do they mean?</p> <p>21 Q. Was that No. 4?</p> <p>22 MR. BUTLER: Maybe your question</p> <p>23 wasn't clear, you're asking only about</p> <p>24 point 1 and not about the paragraph 6</p> <p>25 generally?</p>

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<p>1 D. Larue</p> <p>2 MR. HARRIS: Correct. He uses</p> <p>3 uncertainty three times and subjectivity</p> <p>4 one time. I'm asking about his use of</p> <p>5 the word subjectivity, two words after</p> <p>6 the one in parenthesis in paragraph 6.</p> <p>7 A. Have I not answered that question?</p> <p>8 Q. Well, I think -- you said -- does</p> <p>9 uncertainty there include subjective</p> <p>10 evaluation?</p> <p>11 A. Well, certainly to some extent.</p> <p>12 How would you interpret these facts</p> <p>13 and circumstances, what facts and</p> <p>14 circumstances are relevant?</p> <p>15 Q. And when you say given the</p> <p>16 uncertainty, among who?</p> <p>17 MR. BUTLER: Objection. Form.</p> <p>18 A. Any party that didn't have an</p> <p>19 understanding of all of the relevant facts</p> <p>20 and circumstances.</p> <p>21 Q. Well, who is responsible for a</p> <p>22 party's financial statement?</p> <p>23 A. Management with the oversight of</p> <p>24 the audit committee and the approval of the</p> <p>25 board of directors and, obviously, the</p>	<p>1 D. Larue</p> <p>2 inside the organization.</p> <p>3 Q. That's my question. Were you</p> <p>4 assuming that they were uncertain?</p> <p>5 A. Not necessarily.</p> <p>6 Q. So the uncertainty here does not</p> <p>7 refer to the management of L&H, in No. 1?</p> <p>8 A. The management being who? It</p> <p>9 doesn't necessarily refer specifically to</p> <p>10 management or individuals within management.</p> <p>11 Q. Does the uncertainty in No. 1 refer</p> <p>12 to the audit committee of L&H?</p> <p>13 A. It could.</p> <p>14 Q. I didn't ask if it could. I asked</p> <p>15 if it does?</p> <p>16 A. I don't know what the audit</p> <p>17 committee did or did not know.</p> <p>18 Q. I understand that.</p> <p>19 A. It's my understanding that the</p> <p>20 specific details of a lot of the different</p> <p>21 aspects of these transactions were generally</p> <p>22 unknown by various participants.</p> <p>23 Q. Who was the audit committee?</p> <p>24 A. Who were the members of the audit</p> <p>25 committee?</p>
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<p>1 D. Larue</p> <p>2 external auditor is responsible for</p> <p>3 conducting an audit designed to provide</p> <p>4 reasonable assurance that the financial</p> <p>5 statements are fairly presented in every</p> <p>6 material respect in accordance with U.S.</p> <p>7 GAAP.</p> <p>8 Q. So we have identified four points,</p> <p>9 management, audit committee, board of</p> <p>10 directors, outside auditors?</p> <p>11 A. That's correct.</p> <p>12 Q. Are you assuming here that the</p> <p>13 management of L&H was uncertain regarding the</p> <p>14 underlying facts and circumstances of the</p> <p>15 software licensing agreements between L&H and</p> <p>16 the Language Development Companies at the</p> <p>17 time the license fees were recognized as</p> <p>18 revenue by L&H?</p> <p>19 A. I don't know what management knew</p> <p>20 or didn't know.</p> <p>21 Q. My question is, are you -- in</p> <p>22 reaching your conclusion, did you assume that</p> <p>23 management was uncertain?</p> <p>24 A. I don't know if management was</p> <p>25 uncertain or not. I don't know who knew what</p>	<p>1 D. Larue</p> <p>2 Q. Yes.</p> <p>3 A. I don't know.</p> <p>4 Q. What did they know about the facts</p> <p>5 and circumstances?</p> <p>6 A. I don't know.</p> <p>7 Q. So you don't know if they were</p> <p>8 uncertain or not?</p> <p>9 A. From their vantage point, I don't</p> <p>10 know if there was uncertainty from their</p> <p>11 point.</p> <p>12 Q. Who was the management at L&H?</p> <p>13 A. There were a number of individuals.</p> <p>14 Q. Were they uncertain about the facts</p> <p>15 and circumstances of the software licensing</p> <p>16 agreement?</p> <p>17 A. They may have been, they may not</p> <p>18 have been.</p> <p>19 Q. You don't know?</p> <p>20 A. I don't know.</p> <p>21 Q. Was the board of directors</p> <p>22 uncertain about the facts and</p> <p>23 circumstances -- was the board of directors</p> <p>24 of L&H uncertain about the underlying facts</p> <p>25 and circumstances of the software licensing</p>

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<p>1 D. Larue</p> <p>2 agreements between L&H and the Language</p> <p>3 Development Companies?</p> <p>4 A. I don't know.</p> <p>5 Q. Was KPMG uncertain surrounding the</p> <p>6 underlying -- did they have any uncertainty</p> <p>7 surrounding the underlying facts and</p> <p>8 circumstances of the software licensing</p> <p>9 agreement between L&H and the Language</p> <p>10 Development Companies?</p> <p>11 A. Again, you would have to specify</p> <p>12 who at KPMG, but as a general proposition, I</p> <p>13 had the impression that there were facts</p> <p>14 unknown to them at the time these revenues</p> <p>15 were recognized and there after, sometime</p> <p>16 thereafter.</p> <p>17 Q. Who were the individuals at KPMG</p> <p>18 that were responsible for auditing Lernout</p> <p>19 and Hauspie?</p> <p>20 A. I don't know. As a general</p> <p>21 statement, I think they were unfamiliar with</p> <p>22 a lot of the relevant facts.</p> <p>23 Q. You don't know anyone?</p> <p>24 A. Again, I can't opine as to what any</p> <p>25 particular individual knew or didn't know,</p>	<p>1 D. Larue</p> <p>2 to Messrs. Hauspie and Willard?</p> <p>3 A. What individuals?</p> <p>4 Q. Yes.</p> <p>5 A. I don't know.</p> <p>6 Q. Did they have any uncertainty</p> <p>7 regarding the underlying facts and</p> <p>8 circumstances of the software licensing</p> <p>9 agreements between L&H and the Language</p> <p>10 Development Companies at the time they made</p> <p>11 the loan?</p> <p>12 A. My impression is that they did.</p> <p>13 Q. Based on what?</p> <p>14 A. My impression is that they did,</p> <p>15 that all of these facts were not known. You</p> <p>16 asked me, my impression is yes.</p> <p>17 Q. I asked what your impression is</p> <p>18 based on.</p> <p>19 A. Can I point to specific documents</p> <p>20 that tell me what facts and circumstances</p> <p>21 they knew or did not know and which members</p> <p>22 of a committee may have known or not known</p> <p>23 those facts? I can't comprehensively do</p> <p>24 that.</p> <p>25 Q. Now, if the -- we go through, you</p>
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<p>1 D. Larue</p> <p>2 but I have the impression that they were</p> <p>3 uncertain about enough of the key facts in</p> <p>4 terms of these arrangements at the time the</p> <p>5 revenues were recognized and that's borne out</p> <p>6 by some of the statements in the audit work</p> <p>7 papers that I've addressed later.</p> <p>8 Q. Was Dexia -- was anyone at Dexia</p> <p>9 uncertain about the underlying fact and</p> <p>10 circumstances?</p> <p>11 A. Was anyone at Dexia uncertain?</p> <p>12 I'm sure there were people at Dexia</p> <p>13 who were uncertain about the underlying facts</p> <p>14 and circumstances.</p> <p>15 Q. Who authorized the loans by Dexia</p> <p>16 to the LDCs?</p> <p>17 MR. BUTLER: Objection to form.</p> <p>18 There were no loans to the LDCs.</p> <p>19 A. There were no loans to the LDCs.</p> <p>20 Q. Now that you've been coached by</p> <p>21 your --</p> <p>22 MR. BUTLER: I don't think you</p> <p>23 meant to say this. You mean Lernout,</p> <p>24 Hauspie.</p> <p>25 Q. Who authorized the \$20 million loan</p>	<p>1 D. Larue</p> <p>2 say the uncertainty surrounding the nature</p> <p>3 and extent of the relationship between the</p> <p>4 LDCs and L&H and Messrs. Lernout, Hauspie and</p> <p>5 Willard, right?</p> <p>6 Again, is uncertainty there an</p> <p>7 assumption, a statement of fact or an</p> <p>8 opinion?</p> <p>9 A. It's an assumption supported, for</p> <p>10 example, in the audit committee report.</p> <p>11 Q. Okay. And when you say</p> <p>12 uncertainty, it is an assumption, it assumes</p> <p>13 who was uncertain?</p> <p>14 MR. BUTLER: Objection to form.</p> <p>15 A. It's a general reference to the</p> <p>16 fact that the relationship between L&H and</p> <p>17 the LDCs and these three individuals, the</p> <p>18 full extent of the relationship and the</p> <p>19 nature of the relationship does not appear to</p> <p>20 have been known by various parties.</p> <p>21 Q. But by whom, who is it important to</p> <p>22 your conclusion that it not be known to?</p> <p>23 MR. BUTLER: Objection to form.</p> <p>24 A. I suppose KPMG.</p> <p>25 Q. Anyone else?</p>

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<p>1 D. Larue</p> <p>2 A. Artesia.</p> <p>3 Q. What is the basis for your</p> <p>4 statement that Artesia was uncertain about</p> <p>5 the nature and extent of the relationship</p> <p>6 between LDCs and L&H and Messrs. Lernout,</p> <p>7 Hauspie and Willard?</p> <p>8 A. Again, that's my general</p> <p>9 understanding as confirmed to the extent that</p> <p>10 is it is addressed in the audit committee</p> <p>11 report.</p> <p>12 Q. Artesia or Dexia certainly knew</p> <p>13 that Lernout, Hauspie and Willard had entered</p> <p>14 into credit default swaps with regard to</p> <p>15 loans with regard to Radial and LIC, correct?</p> <p>16 A. Presumably there were people at</p> <p>17 Dexia who approved those transactions, who</p> <p>18 knew of those transactions.</p> <p>19 Q. And Dexia knew that it had loaned</p> <p>20 \$20 million to Lernout, Hauspie and Willard</p> <p>21 to fund certain LDCs, correct?</p> <p>22 A. I don't know that.</p> <p>23 Q. You don't know that?</p> <p>24 A. No.</p> <p>25 Q. Do you know that they didn't know</p>	<p>1 D. Larue</p> <p>2 account for various transactions?</p> <p>3 A. If KPMG was uncertain as to how to</p> <p>4 account for various transactions, could you</p> <p>5 be more specific?</p> <p>6 Q. You identified certain transactions</p> <p>7 as these transactions.</p> <p>8 A. Correct.</p> <p>9 Q. Is there -- is there anything that</p> <p>10 suggests that KPMG had any uncertainty or</p> <p>11 lack of definitive guidance available to it</p> <p>12 under GAAP to account for these transactions?</p> <p>13 A. At the time the revenues were</p> <p>14 recognized?</p> <p>15 Q. Yes.</p> <p>16 A. I don't know what level of</p> <p>17 uncertainty or certainty went into the</p> <p>18 judgment as to whether or not the accounting</p> <p>19 treatment of these fees -- the fees were</p> <p>20 apparently recorded as revenue.</p> <p>21 KPMG apparently reviewed the</p> <p>22 recording of those revenues and management's</p> <p>23 policy in implementing SOP 97-2 and performed</p> <p>24 whatever audit procedures they felt necessary</p> <p>25 to gain reasonable assurance that the</p>
Page 171	Page 173
<p>1 D. Larue</p> <p>2 it?</p> <p>3 A. No, I know that the loan -- I</p> <p>4 assumed that loan was made, but I don't know</p> <p>5 what or who at Dexia knew how the proceeds</p> <p>6 had been used.</p> <p>7 Q. And you don't know whether they had</p> <p>8 any uncertainty about how it was going to be</p> <p>9 used, correct?</p> <p>10 A. Again, you're referring to a</p> <p>11 specific individual or Dexia in general? I</p> <p>12 had the impression that there was</p> <p>13 uncertainty.</p> <p>14 Q. That is based on?</p> <p>15 A. It's an impression that I have.</p> <p>16 Q. An impression?</p> <p>17 A. Yes.</p> <p>18 Q. In three, it says, The uncertainty</p> <p>19 and lack of definitive guidance available</p> <p>20 under GAAP, is that a statement of fact, an</p> <p>21 opinion or an assumption?</p> <p>22 A. That's a statement of fact.</p> <p>23 Q. Is there anything that you have</p> <p>24 come across that suggests that KPMG was</p> <p>25 uncertain as to the proper manner in which to</p>	<p>1 D. Larue</p> <p>2 recording of those revenues was proper.</p> <p>3 Whatever uncertainty they may have</p> <p>4 had they resolved apparently in favor of</p> <p>5 letting the recognition of revenues stand.</p> <p>6 Q. Okay.</p> <p>7 A. Apparently it was not clearly</p> <p>8 improper to them.</p> <p>9 Q. You said they were uncertain about</p> <p>10 the facts?</p> <p>11 MR. BUTLER: Objection to form.</p> <p>12 A. It's my understanding they were</p> <p>13 uncertain about the facts, in terms of they</p> <p>14 didn't have all of the facts available to</p> <p>15 them.</p> <p>16 Q. So based on the fact, it's your</p> <p>17 view that based on the facts available to</p> <p>18 KPMG, their view that the manner for the</p> <p>19 accounting was not clearly improper, correct?</p> <p>20 MR. BUTLER: Objection to form.</p> <p>21 A. Assuming these amounts were</p> <p>22 reported as revenues in the financial</p> <p>23 statements, assuming KPMG reviewed the</p> <p>24 accounting treatment of those fees, one would</p> <p>25 infer from that, that they ultimately</p>

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1 D. Larue
2 concluded that the recording of that revenue
3 was not clearly improper.
4 Q. Based on what was known to them?
5 MR. BUTLER: Objection.
6 A. Based on a lot of things, what was
7 known to them, their understanding of GAAP,
8 the application of GAAP to the underlying
9 facts and circumstances, based on all these
10 things, you separated out these comments when
11 they really roll into each other. There were
12 a variety of things that to my mind allowed
13 me to render this opinion.
14 Q. I understand that. I'm not the one
15 who separated them, you did.
16 A. Yeah. They're part of the same
17 paragraph. These are all reasons why. Any
18 one of those reasons.
19 THE VIDEOGRAPHER: We're going off
20 the record at 1:29. This is the end of
21 tape No. 2.
22 (Luncheon recess taken at 1:29
23 p.m.)
24
25

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1 D. Larue
2 AFTERNOON SESSION
3 (Time noted: 2:01 p.m.)
4 DAVID LARUE, resumed and
5 testified as follows:
6 THE VIDEOGRAPHER: We're going back
7 on the record. The time is 2:01 and
8 this is tape No. 3.
9 EXAMINATION BY (Cont'd.)
10 MR. HARRIS:
11 Q. Mr. Larue, we were looking at
12 paragraph 6 of your report, which I believe
13 sets forth your first conclusion, correct?
14 A. Yes, that's a summary of
15 conclusions.
16 Q. And you there indicate in -- you
17 use the phrase in paragraph 6, at the time
18 the license fees were recognized at revenue
19 by L&H, correct?
20 A. Yes.
21 Q. I see that that is in one of the
22 givens, but is that a part of your conclusion
23 at the end?
24 And if you didn't understand that
25 question, I'm happy to try to explain it, but

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1 D. Larue
2 do you understand it?
3 A. Well, I assumed one of the factual
4 assumptions I made was that L&H did, in fact,
5 recognize these fees as revenue in 1998 and
6 in 1999.
7 Q. So I guess my question is, is your
8 conclusion that it did not make L&H's
9 recognition of these fees as revenue in 1998
10 and 1999 clearly improper under GAAP, limited
11 to the time in which -- to the time at which
12 it was actually recognized as revenue?
13 A. Yes.
14 Q. And it is fair to say that you have
15 not -- you have not expressed an opinion in
16 either of your reports as to whether it was
17 clearly improper for L&H to not restate its
18 financials with regard to the transactions
19 that you have assumed in your report?
20 MR. BUTLER: Objection to form.
21 A. It's the double negative that's
22 getting me, clearly improper not to restate.
23 Q. That's exactly in your conclusion
24 and it is -- I'm trying to follow your
25 conclusion where you use the not and clearly

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1 D. Larue
2 improper.
3 A. By golly, I do. I'm sorry about
4 that. I'm guilty -- this opinion relates to
5 the recognition of revenue on the assumption
6 that that revenue was recognized from these
7 LDCs in 1998, I believe, as alleged and in
8 1999.
9 Q. And when you say in 1999, when you
10 say recognized as revenue, are you referring
11 to calendar year 1999 as the time period in
12 which it was recognized or are you referring
13 to the time in which L&H's 1999 financial
14 statements were issued to the public or some
15 other time?
16 A. I believe this revenue -- the
17 factual assumption that I made was that the
18 revenue was recognized and reported in the
19 quarterly press releases, as well as in
20 the -- as well as in the financial statements
21 for that year.
22 Ultimately, you know, the final
23 decision in terms of whether or not to
24 recognize revenue doesn't necessarily take
25 place until it either is or isn't recognized

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<p>1 D. Larue</p> <p>2 as revenue in the financial statement.</p> <p>3 Q. I'm trying to focus in on the</p> <p>4 phrase, at the time the license fees were</p> <p>5 recognized as revenue by L&H.</p> <p>6 What time did you mean by that?</p> <p>7 A. At the time it was recognized as</p> <p>8 revenue and then reported out.</p> <p>9 Q. And then reported out.</p> <p>10 So that would be with regard to</p> <p>11 1999, sometime in 2000?</p> <p>12 A. No. Well, it was recognized on the</p> <p>13 financial statements or the filings with the</p> <p>14 SEC with the financial statements for the</p> <p>15 year 1999, but I believe it was also included</p> <p>16 in the quarterly results that were reported</p> <p>17 out during the year for the quarters.</p> <p>18 Q. So you are not -- you are talking</p> <p>19 about the time in which it is first</p> <p>20 recognized and first reported?</p> <p>21 A. That's correct.</p> <p>22 Q. And you are not identifying any --</p> <p>23 you are not opining as to whether or not any</p> <p>24 actions subsequent to that date with regard</p> <p>25 to that reported revenue was clearly</p>	<p>1 D. Larue</p> <p>2 has an opportunity to either restate or not</p> <p>3 restate its financials once it knows what has</p> <p>4 happened, correct?</p> <p>5 MR. BUTLER: Objection to form.</p> <p>6 A. It does have that opportunity.</p> <p>7 Q. And when you had identified the</p> <p>8 uncertainty about whether or not a loan would</p> <p>9 actually occur or not occur, you assume at</p> <p>10 some point, in fact, it did occur, correct?</p> <p>11 MR. BUTLER: Objection to form.</p> <p>12 A. My understanding is that the loan</p> <p>13 did occur, the loans did occur in 1998 and</p> <p>14 1999.</p> <p>15 I'm not sure I follow you.</p> <p>16 Q. You had said when I asked you what</p> <p>17 uncertainty was in subparagraph 1 of</p> <p>18 paragraph 6 of your report, you said the</p> <p>19 uncertainty about what would happen in the</p> <p>20 future, you said there was an expectation a</p> <p>21 loan would be made, but you didn't know</p> <p>22 whether or not, in fact, a loan would be</p> <p>23 made, so there was that uncertainty at the</p> <p>24 time that L&H recognized as revenue the</p> <p>25 amounts from the LDC, correct?</p>
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<p>1 D. Larue</p> <p>2 improper, correct?</p> <p>3 MR. BUTLER: Object to the form.</p> <p>4 A. I think that's correct, yes.</p> <p>5 Q. And so you are not opining as to</p> <p>6 whether L&H should or should not have</p> <p>7 restated its financials with regard to these</p> <p>8 transactions at some point in the future,</p> <p>9 correct?</p> <p>10 A. I'm not opining on that.</p> <p>11 Q. And you're not opining as to</p> <p>12 whether or not L&H's failure to do so prior</p> <p>13 to June 1, 2000 was or was not clearly</p> <p>14 improper, correct.</p> <p>15 A. I'm not opining on that. It seems</p> <p>16 that's an ongoing issue. If you reported</p> <p>17 revenue that you shouldn't have reported,</p> <p>18 then it should be corrected at some point in</p> <p>19 time.</p> <p>20 Q. You talked about the uncertainty</p> <p>21 and the uncertainty was about what some</p> <p>22 things would happen in the future, correct?</p> <p>23 A. Yes, that's part of the</p> <p>24 uncertainty.</p> <p>25 Q. And once that happens, the company</p>	<p>1 D. Larue</p> <p>2 MR. BUTLER: Objection to form.</p> <p>3 A. I don't think I said there was</p> <p>4 uncertainty about the loan being made.</p> <p>5 Q. What uncertainty was there about</p> <p>6 the future then?</p> <p>7 A. I think one of the uncertainty I</p> <p>8 referred to earlier was it's my understanding</p> <p>9 that the loan was made, but at the time the</p> <p>10 funds were disbursed, the guarantees or the</p> <p>11 CDSs had not been finalized or contemplated,</p> <p>12 whatever.</p> <p>13 Q. You do assume that after the</p> <p>14 revenue was recognized, the CDSs were, in</p> <p>15 fact, issued and formalized and put into</p> <p>16 place, correct?</p> <p>17 A. Yes.</p> <p>18 Q. And so my question is, you are not</p> <p>19 opining whether or not once that, quote,</p> <p>20 uncertainty about the future was cleared up,</p> <p>21 L&H should or should not have restated its</p> <p>22 financials, correct?</p> <p>23 A. I believe that's correct.</p> <p>24 Q. And trying to avoid the double</p> <p>25 negative, you are not opining whether L&H's</p>

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<p>1 D. Larue</p> <p>2 failure to restate its financials with regard</p> <p>3 to the LDCs prior to June 1, 2000 was or was</p> <p>4 not clearly improper, correct?</p> <p>5 MR. BUTLER: Objection to form.</p> <p>6 A. That's beyond the scope of the</p> <p>7 opinion expressed in this summary.</p> <p>8 Q. Is it beyond the scope of the</p> <p>9 opinion expressed in the report and the</p> <p>10 rebuttal report?</p> <p>11 A. Verify that for me again. Was it</p> <p>12 clearly improper -- I'm just not following</p> <p>13 what you were saying, I'm trying, but I'm</p> <p>14 just not following that.</p> <p>15 Q. Some of this revenue was recognized</p> <p>16 in 1998, correct?</p> <p>17 A. Yes.</p> <p>18 Q. You are not offering an opinion</p> <p>19 whether or not L&H's failure to make</p> <p>20 adjustments with regard to that revenue</p> <p>21 recognized in 1998 some point thereafter, but</p> <p>22 prior to June 1, 2000, was or was not clearly</p> <p>23 improper?</p> <p>24 MR. BUTLER: Objection to form.</p> <p>25 A. This opinion is limited to the time</p>	<p>1 D. Larue</p> <p>2 considered to be related parties, but not</p> <p>3 related parties under common control, FAS 57</p> <p>4 would have required disclosure of the loans</p> <p>5 made by Lernout, Hauspie and Willard to the</p> <p>6 LDF LDCs, but L&H would not have been</p> <p>7 required to defer their recognition of</p> <p>8 revenue and then in 119, disclosure by L&H of</p> <p>9 this loan to the LDH LDCs would have appeared</p> <p>10 to be required under the SEC regulations.</p> <p>11 Q. Did L&H disclose the loan in its</p> <p>12 financial statements prior to June 1, 2000?</p> <p>13 MR. BUTLER: Objection to form.</p> <p>14 A. They didn't disclose the details of</p> <p>15 the loan, no.</p> <p>16 Q. Did they disclose in the manner</p> <p>17 that you say would also appear to have been</p> <p>18 required?</p> <p>19 A. I don't believe they did, no.</p> <p>20 Q. Is it your opinion that the failure</p> <p>21 to disclose this loan to LDF LDCs was</p> <p>22 improper?</p> <p>23 A. If they were considered to be</p> <p>24 related parties, then my interpretation of</p> <p>25 that regulation is that it seems to require</p>
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<p>1 D. Larue</p> <p>2 period when the revenue was recognized and</p> <p>3 reported originally.</p> <p>4 Q. When you say, this opinion, the</p> <p>5 opinion in your report and rebuttal report,</p> <p>6 correct?</p> <p>7 A. That's correct.</p> <p>8 Q. Is there any opinion in your report</p> <p>9 or your rebuttal report as to whether or not</p> <p>10 L&H's failure to disclose the transactions</p> <p>11 that are described in your reports as related</p> <p>12 parties clearly improper?</p> <p>13 A. There is an opinion.</p> <p>14 Q. There is? Where is that?</p> <p>15 A. Again, what we've been looking at</p> <p>16 are summary opinions. The opinions are</p> <p>17 elaborated more fully in section 4 of my</p> <p>18 report. I know it's in here. I'm looking at</p> <p>19 paragraphs 110 through 112 on page 34 and 117</p> <p>20 through 119.</p> <p>21 Q. So as I read those opinions, it is</p> <p>22 your opinion that L&H should have disclosed</p> <p>23 the loans to the LDF LDCs?</p> <p>24 A. Paragraph 118 referring to the LDF</p> <p>25 LDCs states that if LDF LDCs, if they were</p>	<p>1 D. Larue</p> <p>2 disclosure.</p> <p>3 Q. Do you have an opinion as to</p> <p>4 whether or not L&H and the LDF LDCs were</p> <p>5 related parties?</p> <p>6 A. I believe I expressed that opinion.</p> <p>7 In paragraphs 115 and 116, it seems clear</p> <p>8 that a loan of the proceeds from the LHW</p> <p>9 personal loan to the LDF LDCs would not, in</p> <p>10 and of itself, make L&H and the LDF LDCs and</p> <p>11 related parties under FAS 57, and I go on to</p> <p>12 explain why that is.</p> <p>13 Q. Sure.</p> <p>14 A. And then in 116, L&H and the LDCs</p> <p>15 may have been related parties if Lernout,</p> <p>16 Hauspie and Willard received or held a</p> <p>17 substantial equity interest in the LDF LDCs.</p> <p>18 Actually, back in 115, that last</p> <p>19 sentence, For accounting purposes, for a loan</p> <p>20 to make L&H a related party to LDF and the</p> <p>21 LDF LDCs the loan would have had to give L&H</p> <p>22 or parties controlling L&H control or</p> <p>23 significant influence over the entities --</p> <p>24 over these entities such that these entities</p> <p>25 might have been prevented from pursuing their</p>

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<p>1 D. Larue</p> <p>2 own separate interests from L&H.</p> <p>3 Q. I see that, but my question was a</p> <p>4 little different.</p> <p>5 Do you have an opinion as to</p> <p>6 whether or not L&H and the LDF LDCs were</p> <p>7 related parties?</p> <p>8 MR. BUTLER: Objection. Asked and</p> <p>9 answered.</p> <p>10 You can answer it again.</p> <p>11 A. No, I don't. The reason I don't is</p> <p>12 because I don't have the kind of information</p> <p>13 that I would need to determine whether or not</p> <p>14 there was significant influence as required</p> <p>15 under FAS 57.</p> <p>16 Q. And it flows from that that you do</p> <p>17 not have an opinion as to whether or not</p> <p>18 L&H's failure to disclose its relationship</p> <p>19 with the LDF LDCs was clearly improper?</p> <p>20 A. It's not clearly improper from the</p> <p>21 information that I have available to me and</p> <p>22 I've indicated that here. L&H and the LDCs</p> <p>23 may have been related parties.</p> <p>24 Q. But you don't have -- you are not</p> <p>25 opining one way or another whether or not it</p>	<p>1 D. Larue</p> <p>2 received by Radial, LIC and LDF LDCs so that</p> <p>3 the outside investor or shareholder or</p> <p>4 analysts could not determine whether or not</p> <p>5 L&H had recognized the revenue?</p> <p>6 MR. BUTLER: Objection to form.</p> <p>7 A. You paraphrased what I said in that</p> <p>8 paragraph.</p> <p>9 From a review of their public</p> <p>10 financial statements and/or press releases,</p> <p>11 it would not have been possible for a</p> <p>12 shareholder, creditor or other interested</p> <p>13 party to determine if or when some or all of</p> <p>14 the amounts received by L&H from the Radial</p> <p>15 LDCs, the LIC LDCs and LDF LDCs had been</p> <p>16 recognized by L&H as revenue.</p> <p>17 Q. And, right, L&H hid it?</p> <p>18 MR. BUTLER: Objection.</p> <p>19 Q. I know you didn't use it, but isn't</p> <p>20 that the logical conclusion?</p> <p>21 MR. BUTLER: Objection to form.</p> <p>22 A. Hidden to me sounds like something</p> <p>23 deliberate and looks to the subjective state</p> <p>24 of mind of someone who has done something</p> <p>25 deliberately or inadvertently.</p>
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<p>1 D. Larue</p> <p>2 was or it was not clearly improper for L&H to</p> <p>3 fail to disclose its relationship with the</p> <p>4 LDF LDCs?</p> <p>5 A. It depends on whether or not they</p> <p>6 would be considered to be related parties.</p> <p>7 Q. Correct. Since you have no opinion</p> <p>8 to the former, you can't have an opinion to</p> <p>9 the latter?</p> <p>10 A. If there was related parties, there</p> <p>11 is one route that should be taken and if you</p> <p>12 didn't take it, it is clearly improper, if</p> <p>13 they are not related parties, there is</p> <p>14 another route.</p> <p>15 From the facts and circumstances, I</p> <p>16 can't conclude they were related parties.</p> <p>17 Q. And you can't conclude that they</p> <p>18 were not, correct?</p> <p>19 A. That's correct.</p> <p>20 Q. If we look at paragraph 7 of your</p> <p>21 report, you talk -- you have a conclusion</p> <p>22 there.</p> <p>23 Is it correct that in paragraph 7,</p> <p>24 you indicate that L&H's public financial</p> <p>25 statements have, in fact, hidden the revenues</p>	<p>1 D. Larue</p> <p>2 The fact that these revenues may</p> <p>3 have been reported, in those financial</p> <p>4 statements was not clear from the</p> <p>5 presentation of the financial statements or</p> <p>6 from the notes, footnote disclosure to the</p> <p>7 financial statements.</p> <p>8 Q. Wasn't it deliberate by L&H not to</p> <p>9 include those revenues in the footnote</p> <p>10 disclosures under related parties?</p> <p>11 MR. BUTLER: Objection to form.</p> <p>12 A. I don't know.</p> <p>13 Q. You don't know?</p> <p>14 A. You're asking me to opine on the</p> <p>15 subjective state of mind of whoever might</p> <p>16 have been involved in the decision. If, in</p> <p>17 fact, an affirmative decision was made, an</p> <p>18 overt decision was made. I can't do that.</p> <p>19 Q. If L&H and the LDF LDCs were</p> <p>20 related parties, then it would have been</p> <p>21 clearly improper, would it not have, for L&H</p> <p>22 not to disclose that the related party</p> <p>23 transactions with the LDF LDCs?</p> <p>24 A. Subject to a materiality standard,</p> <p>25 if, in fact, they were related parties, that</p>

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<p>1 D. Larue</p> <p>2 information should have been disclosed, yes.</p> <p>3 Q. You're not suggesting that the</p> <p>4 transactions with the LDF LDCs were not</p> <p>5 material to L&H's financials, are you?</p> <p>6 A. I haven't suggested one way or the</p> <p>7 other.</p> <p>8 Q. Do you have an opinion?</p> <p>9 A. I haven't formed an opinion.</p> <p>10 Q. How much did L&H recognize from the</p> <p>11 LDF LDCs?</p> <p>12 A. Well, again, that wasn't separately</p> <p>13 disclosed in the public financial statements,</p> <p>14 so there is no way for me to know how much of</p> <p>15 the revenue that was reported was from the</p> <p>16 LDF LDCs.</p> <p>17 Q. Didn't you assume that amount in</p> <p>18 your rebuttal report?</p> <p>19 A. I assumed that they had recognized</p> <p>20 that revenue.</p> <p>21 Q. How much did they assume -- how</p> <p>22 much revenue did you assume that L&H</p> <p>23 recognized from the LDF LDCs?</p> <p>24 A. The loan, my recollection, was for</p> <p>25 \$20 million. I believe that most or all of</p>	<p>1 D. Larue</p> <p>2 quarter of 1999?</p> <p>3 MR. BUTLER: Objection. Form.</p> <p>4 A. Again, that information is not</p> <p>5 knowable from the public disclosures.</p> <p>6 Q. But you know it?</p> <p>7 A. I've assumed that they recognized</p> <p>8 \$20 million or thereabouts.</p> <p>9 Q. Isn't it more like 32 or</p> <p>10 thereabouts -- 36 or thereabouts?</p> <p>11 MR. BUTLER: Are you referring to</p> <p>12 something in his report?</p> <p>13 A. I don't see that number.</p> <p>14 As I mentioned a moment ago, if</p> <p>15 you're talking about the amount of revenue</p> <p>16 recognized from the LDF LDCs, that included,</p> <p>17 I believe, not only revenue that was paid in</p> <p>18 the form of cash, but also accounts</p> <p>19 receivable.</p> <p>20 Q. And the 20 million was in cash,</p> <p>21 correct?</p> <p>22 MR. BUTLER: Objection to the form.</p> <p>23 You're getting way beyond his factual</p> <p>24 assumptions.</p> <p>25 You can answer the question.</p>
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<p>1 D. Larue</p> <p>2 that was recognized as revenue. Some of that</p> <p>3 may have been deferred. From the LDCs, I</p> <p>4 believe there were also accounts receivable</p> <p>5 that may have been recognized at revenue.</p> <p>6 Q. I'm just asking about the LDF LDCs.</p> <p>7 A. I'm referring to the LDF LDCs.</p> <p>8 Q. When do you assume that the</p> <p>9 transaction with the LDF LDCs was entered</p> <p>10 into?</p> <p>11 A. By transaction, you mean the</p> <p>12 licensing agreement?</p> <p>13 Q. Yes.</p> <p>14 A. In paragraph 127, I state that the</p> <p>15 matter in which L&H accounted for the amounts</p> <p>16 it received from the LDF LDCs in the second</p> <p>17 quarter of 1999 was not separately disclosed</p> <p>18 on the July 28, 1999 press release or on the</p> <p>19 10-Q for that quarter, for the second quarter</p> <p>20 or on the 10-K for the year.</p> <p>21 Q. So it was the second quarter of</p> <p>22 1999, correct?</p> <p>23 A. Yes, sir.</p> <p>24 Q. And how much did L&H recognize in</p> <p>25 revenue from the LDF LDCs in the second</p>	<p>1 D. Larue</p> <p>2 So the record is clear, this</p> <p>3 witness does not know any of the facts</p> <p>4 in the case, aside from what he has been</p> <p>5 asked to assume, so your questions</p> <p>6 related to the fact, I don't see the</p> <p>7 relevance.</p> <p>8 Q. Let me make it clear.</p> <p>9 How much did you assume that L&H</p> <p>10 recognized in revenue with regard to the LDF</p> <p>11 LDCs?</p> <p>12 A. I don't see the amount.</p> <p>13 Q. Let me hand you what we will mark</p> <p>14 as Larue Exhibit 5.</p> <p>15 (Rebuttal report marked Larue</p> <p>16 Exhibit 5 for identification.)</p> <p>17 Q. And ask if you can identify it for</p> <p>18 me, please?</p> <p>19 A. This appears to be a copy of my</p> <p>20 rebuttal to Mr. Love's report.</p> <p>21 Q. I'll direct your attention to</p> <p>22 Exhibit D and can we refer to this as your</p> <p>23 rebuttal report so we don't get into the</p> <p>24 exhibit problem?</p> <p>25 A. Yes, sir.</p>

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<p>1 D. Larue</p> <p>2 Q. I direct your attention to Exhibit</p> <p>3 D to your rebuttal report.</p> <p>4 A. I'm there.</p> <p>5 Q. What is Exhibit D?</p> <p>6 A. It's an adjustment to the Love</p> <p>7 report, Exhibit 7-A.</p> <p>8 Q. And how does it adjust, what are</p> <p>9 the adjustments that you make?</p> <p>10 A. I believe that in his report, his</p> <p>11 Exhibit 7-A included the total amount of</p> <p>12 revenues that he considered to have been</p> <p>13 reported from the LDF LDCs.</p> <p>14 What this does is it separates out</p> <p>15 the amount of those revenues that was</p> <p>16 financed in the form of cash from the loans</p> <p>17 made to Lernout, Hauspie and Willard.</p> <p>18 Q. Is it fair to say that what Exhibit</p> <p>19 D does is it caps the, quote, improperly</p> <p>20 recognized revenues at the amount of the loan</p> <p>21 by Dexia and excludes all other revenues</p> <p>22 recognized from an LDC that Dexia made a loan</p> <p>23 to?</p> <p>24 A. I believe that's right.</p> <p>25 Q. And if we look at quarter 2 for</p>	<p>1 D. Larue</p> <p>2 It is my understanding that you are</p> <p>3 capping it at the amount of the loans and so</p> <p>4 maybe I'm getting confused by the</p> <p>5 subtractions.</p> <p>6 What you're subtracting?</p> <p>7 MR. BUTLER: Objection to form.</p> <p>8 A. A moment ago you said excess. I</p> <p>9 don't believe you meant to say the word</p> <p>10 excess.</p> <p>11 This chart shows how much revenue</p> <p>12 was recognized by the LDF LDCs that was</p> <p>13 financed by the loans from Willard, Lernout,</p> <p>14 Hauspie and it does not include the total</p> <p>15 amount of revenue that was apparently</p> <p>16 recognized and disclosed in Mr. Love's</p> <p>17 report.</p> <p>18 Q. Do you have any -- so whatever that</p> <p>19 total amount that Mr. Love reported would be</p> <p>20 the total amount that L&H recognized with</p> <p>21 regard to the LDF LDCs, correct?</p> <p>22 MR. BUTLER: Objection to form.</p> <p>23 A. I need to see his report.</p> <p>24 Q. You can't tell from looking at your</p> <p>25 report?</p>
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<p>1 D. Larue</p> <p>2 1999, does that help you identify -- you have</p> <p>3 a \$16 million adjustment in Exhibit D,</p> <p>4 correct?</p> <p>5 A. Yes, sir.</p> <p>6 Q. And if I am correct, that is the</p> <p>7 amount, if I understand your chart correctly,</p> <p>8 tell me if I'm wrong, it's your chart, that</p> <p>9 is the amount of revenue that L&H recognized</p> <p>10 from the LDF LDCs in excess of the \$20</p> <p>11 million loan from Dexia to Lernout, Hauspie</p> <p>12 and Willard?</p> <p>13 MR. BUTLER: Objection to form.</p> <p>14 A. You said the excess of the loan?</p> <p>15 Q. Correct.</p> <p>16 A. That's not the excess, that's the</p> <p>17 amount of the loan.</p> <p>18 Q. Sixteen million?</p> <p>19 A. I believe that excludes the</p> <p>20 accounts receivable revenue recognition.</p> <p>21 Q. Which accounts receivable?</p> <p>22 A. I'm assuming there were accounts</p> <p>23 receivable.</p> <p>24 Q. I agree. I understand that</p> <p>25 completely.</p>	<p>1 D. Larue</p> <p>2 A. I can speculate, but I would rather</p> <p>3 see the report.</p> <p>4 Q. All right. Let's make this easy</p> <p>5 because what we're looking at, Exhibit D, do</p> <p>6 you consider the amount of money recognized</p> <p>7 as revenue by L&H from the LDF LDCs to be</p> <p>8 material to L&H's financial statements?</p> <p>9 MR. BUTLER: Objection. Form.</p> <p>10 A. Say that again, the amount of.</p> <p>11 MR. HARRIS: Can you read it back.</p> <p>12 (Record read.)</p> <p>13 A. You're referring to amounts in this</p> <p>14 table?</p> <p>15 Q. Sure.</p> <p>16 A. There is a bigger amount in Mr.</p> <p>17 Love's Exhibit 7-A, I believe.</p> <p>18 Q. I agree. But I assume that --</p> <p>19 let's start with the \$20 million that you</p> <p>20 show on your chart, if that's material to,</p> <p>21 the bigger amount will be material, as well.</p> <p>22 Do you consider the \$20 million</p> <p>23 that you show on Exhibit D in your rebuttal</p> <p>24 report which are the amounts L&H recognized</p> <p>25 as revenue from the transaction with the LDF</p>

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<p>1 D. Larue</p> <p>2 LDCs to be material to L&H's financial</p> <p>3 statements?</p> <p>4 A. Are you referring to the quarterly</p> <p>5 results or to the year end results?</p> <p>6 Q. Let's start with quarterly.</p> <p>7 A. Quarterly, the amount, \$16 million</p> <p>8 relative to \$76 million worth of reported</p> <p>9 revenues, I believe would be considered to be</p> <p>10 material.</p> <p>11 Q. Okay. And now that we have that</p> <p>12 opinion, let's go back.</p> <p>13 Is it true that if the LDF LDCs</p> <p>14 were related parties to L&H, then it was</p> <p>15 clearly improper for L&H not to disclose</p> <p>16 those transactions in its second quarter</p> <p>17 financial statements?</p> <p>18 MR. BUTLER: Can I hear the</p> <p>19 question again, please.</p> <p>20 (Record read.)</p> <p>21 Q. That's second quarter 1999.</p> <p>22 A. Again, you're assuming, you've</p> <p>23 asked me to assume if they are considered to</p> <p>24 be related parties, which I didn't conclude</p> <p>25 in my report.</p>	<p>1 D. Larue</p> <p>2 Q. You could do it tomorrow?</p> <p>3 A. I think I could.</p> <p>4 Q. You could?</p> <p>5 A. I have the knowledge of auditing</p> <p>6 standards and I've been teaching auditing and</p> <p>7 accounting for years and years.</p> <p>8 Q. But you're not a certified public</p> <p>9 accountant?</p> <p>10 A. You didn't ask me if I was</p> <p>11 qualified to express an opinion. I'm not</p> <p>12 qualified to express an opinion because I'm</p> <p>13 not a CPA. I am qualified to conduct an</p> <p>14 audit.</p> <p>15 Q. But outside of the classroom, you</p> <p>16 have never employed typical auditing</p> <p>17 procedures in their entirety, correct?</p> <p>18 A. In their entirety, I don't really</p> <p>19 understand what you mean by that.</p> <p>20 Q. Let me change that.</p> <p>21 A. There are a number of procedures</p> <p>22 that I employed when I do forensic analysis.</p> <p>23 Q. Let me change that.</p> <p>24 Is it true that auditors, when they</p> <p>25 are auditing a public company that files with</p>
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<p>1 D. Larue</p> <p>2 Q. Correct.</p> <p>3 A. Yes. This should have been</p> <p>4 disclosed.</p> <p>5 Q. If we return to your original</p> <p>6 report. In paragraph 8, you refer to</p> <p>7 something called typical auditing procedures,</p> <p>8 correct?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Now, you have never employed</p> <p>11 typical auditing procedures, correct?</p> <p>12 A. Under generally accepted auditing</p> <p>13 standards?</p> <p>14 Q. Yes.</p> <p>15 A. Outside the classroom.</p> <p>16 Q. You never have?</p> <p>17 A. Outside the classroom, my</p> <p>18 experience in employing generally accepted</p> <p>19 auditing standards is limited to my role as</p> <p>20 the audit committee chairman for</p> <p>21 Microstrategy.</p> <p>22 Q. In fact, you're not qualified to</p> <p>23 conduct an audit for a public company that</p> <p>24 files its reports with SEC?</p> <p>25 A. I wouldn't agree with that.</p>	<p>1 D. Larue</p> <p>2 the SEC, prepares before the audit begins, a</p> <p>3 detailed audit plan?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Have you ever prepared a detailed</p> <p>6 audit plan for a public company outside of</p> <p>7 the classroom?</p> <p>8 A. No, sir.</p> <p>9 Q. Now, are the detail auditing plans</p> <p>10 for all public companies identical?</p> <p>11 A. Certainly not.</p> <p>12 Q. Have you ever -- do you have any</p> <p>13 experience in auditing Belgium companies?</p> <p>14 A. No, sir.</p> <p>15 Q. Do you have any knowledge of</p> <p>16 auditing standards under Belgium practice?</p> <p>17 A. No, sir.</p> <p>18 Q. And so when you say KPMG here under</p> <p>19 typical auditing procedures, you are not</p> <p>20 referring to under -- how KPMG would have</p> <p>21 typically conducted its audit in Belgium of</p> <p>22 L&H, correct?</p> <p>23 A. Actually, I state that, that very</p> <p>24 thing on page 6 of my report. All references</p> <p>25 and discussions are to U.S. GAAP and U.S.</p>

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